(1960) 10 MAD CK 0009

In the Madras High Court

Case No : Referred Case No. 2 of 1959

Board of Revenue, Madras — APPELLANT

Vs

Simpson and Mc Conechy Ltd., Madras — RESPONDENT

Date of Decision : 25-10-1960

Acts Referred:
Stamp Act, 1899 — Article 30

Citation : AIR 1961 Mad 210 : (1961) ILR (Mad) 222 : (1961) 1 MLJ 83

Hon'ble Judges : P.V. Rajamannar, C.J;Veeraswami, J;Somasundaram, J

Bench : Full Bench

Advocate : G. Ramanujam, for Govt. Pleader, for the Appellant; V. Thyagarajan, for M.V. Gopalaratnam and N. K. Pattabhiraman, for the Respondent

Judgement

Rajamannar, C.J.—This is a reference u/s 57 of the Indian Stamp Act in respect of a document which was the subject-matter of an earlier

reference to this Court (R. C. No. 23 of 1957), The question then referred for decision was whether the document was to be classified as a lease

or a mortgage with possession. This Court was of the opinion that the document was not a mortgage with possession, but a lease, and that it also

contained a separate agreement for subrogation. The learned Government Pleader then tried to raise the question as to the proper duty leviable on

the document on the footing that it was a lease. We refused to answer that question then because that was not the subject-matter of the reference.

Now, the Board of Revenue, as the Chief Controlling Authority, have made a reference of the question as to what is the stamp duty chargeable for

the document.

2. The point for determination is whether the document would fall within Article 30(c) of Sch. I-A of the Act, that is, the Stamp Act as amended in

Madras. That provision is as follows;

Where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.

The material recitals in the document, in our opinion, leave no room for doubt that the document as a lease, falls within the scope of the above

provision. We understand the word ''for'' to mean in consideration of. In the preamble to the indenture, we have the following statement:

Whereas, with a view to discharge subsisting encumbrances on the property, the lessor applied to the lessee for an advance of Rs. 75,000 (Rs.

seventyfive thousand), agreeing to secure unto the lessee the due repayment of the sum on the property hereunder described by rights of

subrogation and also to grant a lease in favour of the lessee, and the latter consented to grant the advance, interest free, subject to terms and

conditions hereunder set out.

The first clause in the operative portion of the document makes it abundantly clear that this advance is the consideration for the lease. The very

words ''in consideration of the sum of Rs. 75,000'' are used. Clause 3 provides for the rent of a sum of Rs, 1750 per month. Clause 4 empowers

the lessee to withhold from and out of the monthly rent of Rs. 1750 a sum of Rs. 750 per month and appropriate the same in liquidation of the sum

of Rs. 75,000, advanced by him. The first covenant mentioned in Clause 6 is the covenant to pay the monthly rent reserved, subject to the

deduction above referred to. There is therefore both money advanced and also rent reserved. It is impossible to contend that the document does

not fall within the mischief of Article 30(c) of Sch. 1-A of the Act.

3. Cases have arisen, in which the lessee pays the rent for one month or for the entire period of the lease in advance, and there is no other

additional sum advanced. Even then, this Court has held that the- above provision would apply. In The Collector of Madras Vs. A.R.J. Runacres

and Another, , the facts were these. Under the terms of the lease of a house, the tenant agreed to pay a monthly rent of Rs. 250 in advance and to

deposit with the landlord a month''s rent, which was to be held as security for future payment of rent.

It was held that the lease must be stamped under Article 30(c) of Sch. 1-A of the Madras Stamp (Amendment) Act (VI of 1922) (vide also ILR

Mad 473 -- reference under Stamp Act). The early decision, ILR Mad 203, Reference under Stamp Act, Section 46, was relied on by learned

counsel for the party. There, by a document purporting to be a lease, certain land was leased for four years at a rent of Rs. 15 per annum. Out of

the total rent, it was stipulated that Rs. 50 should be paid in advance and the balance of Rs. 10 at the end of the term.

It was held that the payment of Rs. 50 in advance was not payment of a premium or fine within the meaning of Article 39(c) of the Indian Stamp

Act, 1879. It was also held in that case that a document purporting to be a rent agreement, in and by which the lessee agreed to pay Rs. 30 per

annum as rent and deposited one year''s rent with the lessor, which was to be credited to the rent of the last year of the term, did not fall within the

said Article 39(c), because the deposit of one year''s rent was not a fine or premium. This decision can have no application to the instant case,

because, in Article 39(c) of the Stamp Act of 1879, the words ''or for money advanced'' were absent.

4. The decision of the Bombay High Court in the In Re: Chief Controlling Revenue Authority, , may be usefully referred to. There, in consideration

of the lessee having paid to the lessor a sum of Rs. 33,000 for rent for three years at the rate of Rs. 11,000 per year, the lessor agreed to give the

lessee a lease of certain salt pans for a period of three years. There was another similar agreement, providing for the grant of a lease for two years

on payment of the rent for the two years in advance of Rs. 22,000. It was held that both the sums of Rs. 33,000 and Rs. 22,000 were monies

advanced by the lessee to the lessor. Chagla, C. J., observed thus:

If the lessee pays an amount in respect of the rent prior to the liability arising, that payment is nothing more than an advance made by the lessee to

the lessor. He makes an advance, and the agreement is that the lessor will satisfy the lessee''s liability out of that amount when that liability arises.

But the legal character of that payment is not rent, but moneys advanced by the lessee to the lessor.

In that case, there was no rent reserved in addition. So it was held that the documents felt under Article 35(b) of the Stamp Act, which runs as

follows: ""Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved"". The decision in Reference under

Stamp Act, Section 46, ILR Mad 203 was cited; but the learned Judges distinguished it on the ground that it was not necessary there to consider

whether the sum of Rs. 50 was rent or was money advanced.

5. We hold that the document is chargeable with stamp duty under Article 30(c) of Sch. 1-A of the Madras Stamp (Amendment) Act (Act VI of

1922), The reference is answered accordingly.

6. There will be no order as to costs.

